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In re Application of	:	
KONDO et al.	:	
Application No. 10/009,760	:	
PCT No.: PCT/JP01/03203	:	DECISION ON PETITION
Int. Filing Date: 13 April 2001	:	UNDER 37 CFR 1.181
Priority Date: 13 April 2000	:	
Attorney Docket No.: 450101-03158	:	
For: IMAGE PICK-UP APPARATUS AND	:	
IMAGE PICK-UP METHOD	:	

This is a decision on applicants' "Petition to Remove Abandonment," which is being treated as a petition to withdraw holding of abandonment under 37 CFR 1.181 filed in the Patent and Trademark Office (PTO) on 13 January 2003. No petition fee is not required.

BACKGROUND

On 13 April 2001, applicants filed international application no. PCT/JP01/03203 which claimed a priority date of 13 April 2000. A copy of the international application was communicated to the United States Patent and Trademark Office from the International Bureau on 25 October 2001. No Demand was filed with the International Preliminary Examining Authority. As a result, the deadline for entry into the national stage in the United States expired 20 months from the priority date, on 13 December 2001.

On 11 December 2001, applicants filed a transmittal letter for entry into the national stage in the United States which was accompanied by, inter alia, the basic national fee; an information disclosure statement; and an English translation of the international application.

On 01 February 2002, the United States Designated/Elected Office mailed a NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 (Form PCT/DO/EO/905) indicating that an oath or declaration in compliance with 37 CFR 1.497(a) and (b) must be filed. The notification set a two-month time limit in which to respond.

On 02 January 2003, the United States Designated/Elected Office (DO/EO/US) mailed a NOTIFICATION OF ABANDONMENT indicating, in effect, that the application was abandoned for failure to respond to the Notification of Missing Requirements mailed 01 February 2002.

On 18 January 2002, applicants filed the present petition requesting, in effect, that the holding of abandonment in the case be withdrawn on the grounds that applicant filed a response on 29 March 2002. The petition was accompanied by: a copy of a communication regarding submission of declaration; a copy of the combined declaration and power of attorney allegedly filed 29 March 2002; and an unstamped "postcard" receipt.

DISCUSSION

A review of the application file reveals that the original declaration allegedly filed 29 March 2002 under 37 CFR 1.8 is not located therein.

37 CFR 1.8 states:

In the event that correspondence is considered timely filed by being mailed or transmitted in accordance with paragraph (a) of this section, but not received in the Patent and Trademark Office, and the application is held to be abandoned or the proceeding is dismissed, terminated, or decided with prejudice, the correspondence will be considered timely if the party who forwarded such correspondence:

- (1) Informs the Office of the previous mailing or transmission of the correspondence promptly after becoming aware that the Office has no evidence of receipt of the correspondence;
- (2) Supplies an additional copy of the previously mailed or transmitted correspondence and certificate; and
- (3) Includes a statement which attests on a personal knowledge basis or to the satisfaction of the Commissioner to the previous timely mailing or transmission.

The evidence filed with the petition is convincing that a response including a combined declaration power of attorney was filed with a certificate of mailing dated 18 December 2000. With a grantable three month extension of time being provided with the response, the response filed 29 March 2002 was timely to the Notification of Missing Requirements mailed 01 February 2002. Additionally, applicant has: (1) informed the Office of the previous mailing of the correspondence promptly after becoming aware that the Office did not receive the items mailed 18 December 2000, (2) supplied copies of the previously mailed correspondence; and (3) William Frommer attests that, "on March 29, 2002, I prepared and signed a communication on the above-referenced application, enclosing a signed declaration in response to a Notification of Missing Parts of the Application dated February 1, 2002 . . ." Thus, it is considered appropriate to withdraw the holding of abandonment.

Accordingly, it is considered appropriate to withdraw the holding of abandonment.

CONCLUSION

As construed above, applicants' petition under 37 CFR 1.181 to withdraw the holding of abandonment is **GRANTED**.

The Notification of Abandonment mailed on 02 January 2003 is hereby **VACATED**.

The application has an international filing date of 10 December 1999 under 35 U.S.C. 363, and a 35 U.S.C. 371(c) date of **13 January 2003**.

This application is being forwarded to the National Stage Processing Branch of the International Division for further processing.



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